



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

DEC 21 2015

Ron Gould
Janice Gould
P.O. Box 3145
Lake Havasu, AZ 86405

RE: MUR 6624
Ron Gould
Gould for Congress
Committee to Elect Ron Gould

Dear Mr. Gould and Ms. Gould:

On August 14, 2012, the Federal Election Commission ("Commission") notified Ron Gould, Gould for Congress and Janice Gould in her official capacity as treasurer ("Federal Committee"), the Committee to Elect Ron Gould and Janice Gould in her official capacity as treasurer, of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act").

On December 15, 2015, the Commission considered the complaint, the response and publicly available information, but was equally divided on whether to find reason to believe that Ron Gould, the Federal Committee, the Committee to Elect Ron Gould and Janice Gould in her official capacity as treasurer violated 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d). On that same date, the Commission found reason to believe that the Federal Committee violated 52 U.S.C. § 30104(b), a provision of the Act. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

Please note that the Federal Committee has a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to the Federal Committee as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that the Federal Committee violated the law.

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If the Federal Committee is interested in engaging in pre-probable cause conciliation, please contact Marianne Abely, the attorney assigned to this matter, at (202) 694-1650 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, the Federal Committee may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if the Federal Committee is not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

If the Federal Committee intends to be represented by counsel in this matter, please advise the Commission by completing the enclosed Statement of Designation of Counsel form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

In the meantime, this matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.

We look forward to your response.

On behalf of the Commission,



Ann M. Ravel
Chair

Enclosures

Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Gould for Congress and Janice Gould in MUR 6624
her official capacity as treasurer

I. INTRODUCTION

This matter was generated by a Complaint filed with the Federal Election Commission by George Nault, alleging violations of the Federal Election Campaign Act, as amended (the "Act"), by Gould for Congress and Janice Gould in her official capacity as treasurer.

II. FACTUAL AND LEGAL ANALYSIS

A. Facts

Arizona State Senator Ron Gould filed a Statement of Candidacy for the Republican primary race in the 4th Congressional District of Arizona on November 21, 2011, designated Gould for Congress as his exploratory committee, and named Janice Gould as its treasurer.¹ On January 23, 2012, Gould filed an amended Statement of Candidacy designating Gould for Congress as his principal campaign committee and removing the exploratory notation from the committee's name.² Gould for Congress filed its first disclosure report with the Commission — the April Quarterly Report — on April 15, 2012.

¹ See Arizona State Legislature, Member Page at http://www.azleg.gov/MembersPage.asp?Member_ID=96&Legislature=49&Session_ID=87. Gould also filed a corresponding Statement of Organization for "Gould for Congress (exploratory)". These filings did not specify the state, district, office sought, and party affiliation of the federal office he was seeking. The Reports Analysis Division ("RAD") sent Gould a Request for Additional Information ("RFAI") requesting the information and Gould filed an amended Statement of Organization on December 30, 2011, specifying that he was running in the Republican primary in the 4th Congressional district of Arizona. See Letter from Chief of the Authorized Branch, FEC, to Ron Gould (Dec. 9, 2011); Ron Gould Amended Statement of Candidacy (Dec. 30, 2011).

² See Ron Gould Amended Statement of Candidacy (Jan. 23, 2012); Gould for Congress Amended Statement of Organization (Jan. 23, 2012).

Club for Growth PAC ("CFG PAC") is the separate segregated fund for Club for Growth, a 527 organization, is registered with the Commission as a qualified nonparty committee (unauthorized), and files regular disclosure reports with the Commission.³ During the 2012 primary election, CFG PAC disclosed receiving 876 contributions totaling \$162,098 between May 3, 2012, and August 30, 2012, that were earmarked for Gould for Congress.⁴ CFG PAC provided, on Schedule A of its relevant FEC Form 3 filings (Report of Receipts and Disbursements), contributor information for each individual earmarked contribution that exceeded \$200, and noted in the memo entry field for each contribution that it was earmarked for Gould.⁵

Gould for Congress reported the contributions it received through CFG PAC as "bundled" contributions by disclosing the receipt of \$155,414 in contributions on FEC Form 3L reports (Report of Contributions Bundled by Lobbyists/Registrants and Lobbyist/Registrant PACs) and identifying CFG PAC as the forwarding "lobbyist/registrant."⁶ It also itemized on Schedule A of the relevant FEC Form 3 filings, the individual contributors who gave CFG PAC contributions earmarked for Gould in amounts that exceeded \$200.⁷ Those itemized

³ See CFG PAC, FEC Form 1, Statement of Organization (Apr. 13, 2009). CFG PAC is not registered as a lobbyist/registrant PAC.

⁴ See CFG PAC, 2012 June Monthly Report (June 20, 2012), 2012 July Monthly Report (Aug. 20, 2012), and 2012 Sept. Monthly Report (Sept. 19, 2012).

⁵ *Id.*; see, e.g., CFG PAC, 2012 June Monthly Report at 7 (June 20, 2012).

⁶ See FEC Form 3L: 2012 Mid-Year Report (July 16, 2012); Amended 2012 Mid-Year Reports (July 18, 2012 and Sept. 24, 2012); 2012 Pre-Primary Reports (Aug. 16, 2012; Amended 2012 Pre-Primary Reports (Sept. 24, 2012 and Oct. 11, 2012); and 2012 October Quarterly Report (Oct. 15, 2012) (collectively reporting the receipt of \$155,414 in "bundled" contributions from CFG PAC).

⁷ 141 of the earmarked contributions (totaling \$115,789) required itemization.

contributions, however, did not contain any memo entries or reference CFG PAC in any way, and did not indicate the date on which the contribution was originally received by CFG PAC.

The Complaint alleges that Gould for Congress failed to disclose all of the required information regarding these contributions and omitted identifying "over 150" contributions as having been "earmarked" by Club for Growth with appropriate memo entries.⁸ The Complaint further alleges that Gould for Congress completely failed to report five individual contributions earmarked by CFG for Gould: \$750 from Robert Bartels (June 14, 2012), \$500 from Robert Battle (June 4, 2012), \$505 from Ed Ligon (June 4, 2012), \$250 from John Popp (dated June 13, 2012), and \$1,000 from Saul Rosenzweig (June 7, 2012).⁹

Gould for Congress denies misreporting the earmarked contributions, asserting that its FEC Form 3L reports contain a summary of the contributions and that information is "populated by FEC software entries" in the committee's disclosure reports.¹⁰ With regard to the five earmarked contributions allegedly omitted from the committee's reports, Respondents provide varying explanations. According to the Response, Gould for Congress omitted Bartel's \$750 contribution by mistake, it accidentally entered Popp's \$250 contribution as \$0, and it could not process the Battle, Ligon and Rosenzweig contributions because it did not have correct credit

⁸ Compl. at 3. *See* 2 U.S.C. § 434(i)(1); 11 C.F.R. § 104.22(b)(1). The Complaint interchangeably refers to the earmarked contributions as "bundled" contributions and "earmarked" contributions. The Response refers to these contributions as "bundled." Resp. at 1-2. As discussed further *infra*, though the contributions were disclosed as bundled contributions, they were actually earmarked contributions.

⁹ Compl. at 2-3. Without elaboration, the Complaint also states that "it is unclear" whether Gould for Congress properly attributed contributions between the primary and general elections. The Response does not address Complainant's assertion and there is no indication on the face of the Gould for Congress disclosure reports that the committee improperly attributed contributions between the primary and general elections. Therefore, the Commission is not pursuing this allegation.

¹⁰ Resp. at 1.

card information.¹¹ Gould for Congress later contacted Ligon and Rosenzweig and obtained the necessary information to process their credit card contributions.¹² The committee, however, could not contact Battle, and it never processed his contribution.¹³ Gould for Congress reported the contribution made by Popp on the 2012 Amended July Quarterly Report (Sept. 24, 2012) and the Bartels, Ligon, and Rosenzweig contributions on the 2012 Amended Pre-Primary Report (Oct. 11, 2012).

B. Analysis

The Act requires political committees to report all contributions and expenditures.¹⁴ Commission regulations require that the intermediary or conduit of an earmarked contribution — here, CFG PAC — “report the original source and the recipient candidate or authorized committee.”¹⁵ When an earmarked contribution exceeds \$200, the conduit’s report must contain the name and mailing address of the contributor, the contributor’s occupation and name of employer, the date the contribution was received by the conduit as well as the amount and election designation, if any.¹⁶

Further, the recipient of an earmarked contribution — here, Gould for Congress — also has reporting obligations if the earmarked contributions received from a single conduit exceed

¹¹ *Id.* at 2.

¹² *Id.*

¹³ *Id.*

¹⁴ 52 U.S.C. § 30104(b).

¹⁵ 11 C.F.R. §§ 102.8(a) and 110.6(b)(2), (c)(1)(iv)(A).

¹⁶ *Id.*

\$200 in an election cycle.¹⁷ The authorized committee must report on Schedule A the identity¹⁸ of each conduit or intermediary who forwards any earmarked contributions that, in the aggregate, exceed \$200 in a calendar year; the total amount of earmarked contributions received from the conduit and the date of receipt.¹⁹ The recipient committee must also itemize on Schedule A, each original contributor whose total contributions to the committee aggregate over \$200 per election, including the full name, mailing address, occupation and employer of the contributors, the amount earmarked and the date the conduit received the contribution.²⁰

Gould for Congress made two basic errors in reporting the conduit contributions it received through CFG PAC. First, it reported the conduit information on the wrong form — FEC Form 3L (Report of Contributions Bundled by Lobbyists/Registrants and Lobbyist/Registrant PACs) instead of FEC Form 3, Schedule A (Itemized Receipts).²¹ A committee is required to file contributions on FEC Form 3L when it receives bundled

¹⁷ See also 52 U.S.C. § 30101(8)(A)(i) (defining contribution) and 11 C.F.R. § 110.6(b)(1) (defining an earmarked contribution is one that contains a "designation, instruction, or encumbrance" that "results in all or any part of a contribution" being made to a "clearly identified candidate or the candidate's authorized committee").

¹⁸ See 52 U.S.C. § 30101(13) (identification means, in the case of an individual, the name, the mailing address, and the occupation of such individual, and the name of employer; in the case of any other person, the full name and address of such person). See also 11 C.F.R. § 100.12.

¹⁹ 11 C.F.R. § 110.6(c)(2). See 52 U.S.C. § 30101a(a)(8) (providing that "all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit" to a candidate, "shall be treated as contributions from such person to such candidate.").

²⁰ 11 C.F.R. § 110.6(c)(2), 11 C.F.R. § 104.3(a)(3) and (4).

²¹ See 52 U.S.C. § 30104(i); 11 C.F.R. § 104.22. Any political committee that is "established or controlled" by a lobbyist/registrant is known as a lobbyist/registrant PAC and must identify themselves as such on an FEC Form 1. 11 CFR § 102.2(a)(2), 104.22(c). A political committee is "established or controlled" by a lobbyist/registrant if it must be disclosed by a lobbyist/registrant to the Secretary of the Senate or the Clerk of the House of Representatives as being established or controlled by a lobbyist/registrant under the Lobbying Disclosure Act of 1995. *Id.* at 11 C.F.R. § 104.22(a)(3), (4)(i).

contributions from lobbyists/registrants and lobbyist/registrant PACs.²² CFG PAC, however, is not registered as a lobbyist/registrant PAC.

Second, although it appears that Gould for Congress itemized on FEC Form 3, Schedule A, the earmarked contributions that it received through CFG PAC which exceeded \$200, those itemized contributions did not contain a memo entry noting that they were earmarked through CFG PAC and did not indicate the date on which CFG PAC originally received the contribution, as required.²³ Thus, there was no indication on the face of the Gould for Congress committee's disclosure reports which of the individual contributions received by the committee were earmarked through CFG PAC. In order to identify which individual contributions Gould received through CFG PAC, one must review the CFG PAC disclosure reports and search for receipts with a memo entry indicating that the contribution was earmarked for Gould.

Further, although RAD instructed the committee on the way to correct its reports, Gould for Congress has never amended its disclosure reports to properly report the earmarked contributions.²⁴

Accordingly, there is reason to believe that Gould for Congress failed to properly report earmarked contributions in violation of 52 U.S.C. § 30104(b).

²² 52 U.S.C. § 30104(i)(1); 11 C.F.R. § 104.22(3).

²³ See *Campaign Guide for Congressional Candidates and Committee*, Appendix A at 125-6 (<http://www.fec.gov/pdf/candgui.pdf>) (demonstrating the proper disclosure of earmarked contributions).

²⁴ On August 31, 2013, the committee's RAD analyst gave the Committee's treasurer, Janice Gould, instructions on the proper way to report earmarked contributions. RAD Communication Log, Aug. 31, 2012. In response, the treasurer apparently stated that it "was going to take her a very long time" to comply with that advice and add the conduit entries, and ultimately she never did make the corrections. *Id.* Instead, the committee filed amendments to the previously filed (and unnecessary) FEC Form 3L reports on September 24, 2012 and October 11, 2012, and filed a new FEC Form 3L report, dated October 15, 2012; it appears that these filings merely disclosed the four additional contributions received through CFG PAC that were not included in its original filings. See *supra* p. 14.